

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of the Commission's Rules) WT Docket No. 95-157
Regarding a Plan for Sharing the Costs)
of Microwave Relocation)

To: The Commission

**COMMENTS OF SOUTHERN COMPANY
IN SUPPORT OF THE PETITIONS FOR RECONSIDERATION**

Southern Company ("Southern"), by and through its undersigned counsel and pursuant to Section 1.429 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.429, hereby submits these Comments in support of the Petitions for Reconsideration filed in the above-captioned proceeding.^{1/}

STATEMENT OF INTEREST

1. Southern and its operating companies are licensees of numerous private operational-fixed microwave facilities operating

^{1/} In the Matter of Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, Second Report and Order, 62 Fed. Reg. 12752 (March 18, 1997).

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in the 2 GHz band throughout their service area.^{2/} Southern primarily uses its 2 GHz microwave facilities to provide critical point-to-point communications for daily and emergency operations. Southern has been an active participant in every phase of this proceeding, submitting Comments and Reply Comments on both the Notice of Proposed Rule Making and the Further Notice of Proposed Rule Making. In each instance, Southern's goal was to ensure equitable treatment of incumbent microwave users, whom the Commission itself stated must be fully protected and fully compensated in the relocation process. In this regard, Southern also supported allowing microwave incumbents who self-relocate to be eligible to receive reimbursement through the cost-sharing relocation plan.

2. Since the inception of this proceeding, Southern has agreed to relocate several of its 2 GHz microwave facilities. Also, Southern has relocated other 2 GHz links which were an integral part of the microwave network because of its agreement with Personal Communication Service ("PCS") licensees. Southern had approximately eighty-eight (88) 2 GHz microwave paths in operation prior to the allocation of the 2 GHz band for PCS use.

^{2/} Southern is an electric utility holding company which wholly owns the common stock of five electric utility operating companies (Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company) and one system service company, Southern Company Services, Inc. Its service territory includes a contiguous area of 122,000 square miles, covering most of the State of Alabama, almost all of the State of Georgia, the panhandle of Florida and 23 counties in southeastern Mississippi.

Approximately sixty-three 63 of their links were relocated through agreements with PCS licensees. Another twenty-six (26) paths had to be self-relocated because they were inoperable without those other paths relocated by PCS licensees. Accordingly, Southern believes it is equitable for the Commission to apply the cost-sharing plan retroactively.

COMMENTS IN SUPPORT OF THE PETITIONS FOR RECONSIDERATION

3. Southern has had an opportunity to review the Petitions for Reconsideration filed by the Utilities Telecommunications Council ("UTC"), the American Petroleum Institute ("API") and the South Carolina Public Service Authority ("Santee Cooper"), and wholeheartedly supports these petitions. In order for microwave incumbents to receive full compensation for their displaced microwave facilities, the Commission must apply its self-relocation rules retroactively and must exclude the depreciation factor in the cost-sharing formula when a microwave incumbent self-relocates. Accordingly, Southern urges the Commission to reconsider and clarify its Second Report and Order in light of these petitions.

A. Retroactivity of the Cost-Sharing Rules

4. The new rules regarding the cost-sharing plan became effective May 19, 1997. Southern believes, however, that the cost-sharing rules should apply retroactively for microwave incumbents who self-relocate. Southern supports the petition of UTC and Santee Cooper who argued that the cost-sharing rules

should be retroactive as of April 5, 1995.^{3/} Fundamental fairness dictates that the cost-sharing rules be retroactive from April 5, 1995 since PCS licensees who relocate microwave incumbents are allowed to submit documentation to the clearinghouse for relocation expenses incurred from that date. This is especially true in light of the Commission's own rationale for allowing self-relocation:

We agree with PCS licensees and microwave incumbents who argue that incumbent participation will accelerate the relocation process by promoting system-wide relocations. Incumbent participation will also give microwave incumbents the option of avoiding time-consuming negotiations, allowing for faster clearing of the 2 GHz band in some instances.^{4/}

5. Southern not only agrees that the cost-sharing rules should be retroactive from April 5, 1995 for self-relocating microwave incumbents, but also agrees that the rules should be effective for all self-relocation performed by microwave incumbents, not just self-relocations necessary to complete system-wide relocations. As noted above, the Commission itself supports system-wide relocation to clear the 2 GHz band faster. Southern urges the Commission not to eliminate reimbursement rights for self-relocated links that are not necessary to complete a system-wide relocation.^{5/} For Southern, in most instances, self-relocation took place to conform network paths which were integrally related. However, there may be some

^{3/} UTC at 7-9 and Santee Cooper at 5-9.

^{4/} Second Report and Order at ¶ 25.

^{5/} See, Santee Cooper at 6-9.

instances where self-relocation took place for individual microwave paths which were not integrated into the larger system, but where relocation was technically necessary for those paths to operate on the same equipment. As an example, a microwave incumbent may not want to maintain both an analog and a digital microwave system. Thus, self-relocations of non-integrated paths should be reimbursable as well as of April 5, 1995.

6. Also, since incumbent licensees who self-relocate may never be reimbursed for those paths unless a PCS licensee actually benefits from the relocation, allowing retroactive reimbursement of non-integrated paths will not unfairly increase the reimbursement expenses for PCS licensees. Finally, Southern agrees with API that the Commission should clarify when relocation occurs for the purposes of calculating the deadline for submission of self-relocation documents to the clearinghouse.^{5/}

B. Excluding the Depreciation Factor For Microwave Incumbents

7. Southern also supports the petitioners' argument that incumbent cost-sharing rights should not be subject to depreciation.^{7/} Southern agrees that applying the depreciation factor to self-relocating incumbents is contrary to the FCC's

^{5/} API at 5, n. 2. The FCC staff has indicated to counsel for Southern that relocation occurs when the replacement facilities are placed in operation.

^{7/} UTC at 2-7, Santee Cooper at 9-12 and API at 9-11.

previous pronouncement that microwave licensees are entitled to full replacement of their microwave facilities and are entitled to full reimbursement of their relocations costs. Unlike the PCS relocators, microwave incumbents are not competing for market share when they self-relocate. Therefore, it is inappropriate to apply the depreciation factor to self-relocating microwave incumbents who simply desire to clear their spectrum for consistency in their microwave networks or to replace equipment already depreciated. Southern also agrees that other safeguards exist under the cost-sharing rules to minimize self-relocation costs, such as the reimbursement cap, the third-party appraisal and the financial risk that self-relocation may never give rise to a reimbursement under the plan.

CONCLUSION

WHEREFORE THE PREMISES CONSIDERED, Southern Company respectfully requests that the Commission reconsider its Second Report and Order in the above-captioned proceeding, and act consistent with the view expressed herein and by petitioners, namely to (1) allow the cost-sharing plan to retroactively apply to self-relocating microwave incumbents from April 5, 1995 and (2) not apply the depreciation factor in the cost-sharing formula for self-relocating microwave incumbents.

Respectfully submitted,

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Dated: May 20, 1997

CERTIFICATE OF SERVICE

I, Jane Aguillard, a secretary in the law firm of McDermott, Will & Emery hereby certify that I have caused a copy of the foregoing "Comments of Southern Company in Support of the Petitions for Reconsideration" to be sent to via first-class mail, postage prepaid to the following individuals:

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